

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-030

State of New Hampshire Banking)

Department,) Order to Show Cause

Petitioner,)

and)

Back Bay, Inc. (d/b/a Mortgage Approval)

Services A Division of Back Bay), John)

J. Mulligan, and Timothy J. Miller,)

Respondents)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.

Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the

1 provisions of the Chapter.

2 Pursuant to RSA 397-A:21, the Commissioner has the authority to
3 suspend, revoke or deny any license and to impose administrative penalties
4 of up to \$2,500.00 for each violation of New Hampshire banking law and
5 rules.

6 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
7 that is or may be an unfair or deceptive act or practice under RSA 358-A and
8 exempt under RSA 358-A:3,I or that may violate any of the provisions of
9 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
10 Commissioner may hold hearings relative to such conduct and may order
11 restitution for a person or persons adversely affected by such conduct. The
12 Commissioner may utilize all remedies available under the Consumer
13 Protection Act.

14 **NOTICE OF RIGHT TO REQUEST A HEARING**

15 The above named Respondents have the right to request a hearing on
16 this Order to Show Cause, as well as the right to be represented by counsel
17 at each Respondent's own expense. All hearings shall comply with RSA 541-A.
18 Any such request for a hearing shall be in writing, and signed by the
19 Respondent or the duly authorized agent of the above named Respondent, and
20 shall be delivered either by hand or certified mail, return receipt
21 requested, to the Banking Department, State of New Hampshire, 53 Regional
22 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within
23 10 days of the Department's receipt of the request. If the Respondent fails
24 to appear at the hearing after being duly notified, such person shall be
25 deemed in default, and the proceeding may be determined against the Respondent

1 upon consideration of the Order to Show Cause, the allegations of which may be
2 deemed to be true.

3 If any of the above named Respondents fails to request a hearing within
4 30 calendar days of receipt of such order or reach formal settlement with the
5 Department within that time frame, then such person shall likewise be deemed
6 in default, and the orders shall, on the thirty-first day, become permanent,
7 and shall remain in full force and effect until and unless later modified or
8 vacated by the Commissioner, for good cause shown.

9 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

10 The Staff Petition dated January 2, 2009 (a copy of which is attached
11 hereto) is incorporated by reference hereto.

12 **ORDER**

13 WHEREAS, finding it necessary and appropriate and in the public
14 interest, and consistent with the intent and purposes of the New Hampshire
15 banking laws, and

16 WHEREAS, finding that the allegations contained in the Staff Petition,
17 if proved true and correct, form the legal basis of the relief requested,

18 It is hereby ORDERED, that:

- 19 1. Respondent Back Bay, Inc. (d/b/a Mortgage Approval Services A
20 Division of Back Bay) ("Respondent Back Bay, Inc.") shall
21 show cause why penalties in the amount of \$75,000.00 should
22 not be imposed against it;
- 23 2. Respondent John J. Mulligan ("Respondent Mulligan") shall
24 show cause why penalties in the amount of \$77,500.00 should
25 not be imposed against him;

1 3. Respondent Timothy J. Miller ("Respondent Miller") shall show
2 cause why penalties in the amount of \$60,000.00 should not be
3 imposed against him;

4 4. The above named Respondents shall show cause why, in addition
5 to the penalties listed in Paragraphs 1 through 3 above, the
6 \$1,311.13 examination fee should not be paid to the
7 Department;

8 5. The above named Respondents shall show cause why, in addition
9 to the penalties listed in Paragraphs 1 through 4 above, the
10 fine for \$775.00 for the late filing of the financial
11 statement should not be paid to the Department;

12 6. The above named Respondents shall show cause why, in addition
13 to the penalties listed in Paragraphs 1 through 5 above, the
14 accrued fine of \$20,400.00 (and still accruing) for the
15 failure to file examination materials should not be paid to
16 the Department;

17 7. The above named Respondents shall be jointly and severally
18 liable for the above amounts alleged in Paragraphs 1 through
19 6 above;

20 8. The above named Respondents shall show cause why, in addition
21 to the penalties listed in Paragraphs 1 through 7 above,
22 Respondent Back Bay, Inc.'s license should not be revoked.

23 It is hereby further ORDERED that:

24 9. Along with the administrative penalties listed for the above
25 named Respondents, the outstanding sum of \$22,486.13 shall be

1 immediately paid; and

2 10. Failure to request a hearing within 30 days of the date of
3 receipt or valid delivery of this Order shall result in a
4 default judgment being rendered and administrative penalties
5 imposed upon the defaulting Respondent(s).
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8 SIGNED,

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10 Dated: 01/02/09

11 /s/
PETER C. HILDRETH
BANK COMMISSIONER
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In re the Matter of:) Case No.: 08-030
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State of New Hampshire Banking)
) Staff Petition
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Back Bay, Inc. (d/b/a Mortgage Approval)
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Services A Division of Back Bay), John)
)
J. Mulligan, and Timothy J. Miller,)
)
)
Respondents)

The Staff of the Banking Department, State of New Hampshire (hereinafter "Department") alleges the following facts:

1. Respondent Back Bay, Inc. (d/b/a Mortgage Approval Services A Division of Back Bay)(hereinafter "Respondent Back Bay, Inc.") was licensed as a Mortgage Banker from at least 1999 until its license expired on December 31, 2007.

3. Respondent Timothy J. Miller (hereinafter "Respondent Miller") was the former President and Director of Operations of Respondent Back Bay, Inc., when licensed by the Department, until at least 2006.

1 Violation of RSA 397-A:13, IV Failure to Pay Late Penalty Owed for Late

2 Filing of Financial Statement (1 Count):

3 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
4 herein.

5 5. Respondent Back Bay, Inc.'s financial statement was due on or
6 before March 31, 2006.

7 6. Respondent Back Bay, Inc. was still licensed at the time its
8 financial statement filing was due to the Department.

9 7. The Department received Respondent Back Bay, Inc.'s financial
10 statement on May 1, 2006 (31 days late), which generated a fine
11 of \$775.00 (\$25.00 a day x 31 days).

12 8. The Department sent invoices to Respondent Back Bay, Inc. in May,
13 June and July of 2006.

14 9. The Department mailed an additional letter to Respondent Back Bay,
15 Inc. on July 25, 2006 regarding the outstanding invoice.

16 10. To date, Respondent Back Bay, Inc. has failed to pay the \$775.00
17 late filing of a financial statement fee.

18 Violation of RSA 397-A:12, V Failure to Pay Examination Fee (1 Count):

19 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

20 Department Inquiries (1 Count):

21 11. Paragraphs 1 through 10 are hereby realleged as fully set forth
22 herein.

23 12. The Department conducted an examination of Respondent Back Bay,
24 Inc. on June 26, 2006, while Respondent Back Bay, Inc. was still
25 licensed with the Department

1 13. On September 1, 2006, the Department mailed the report of
2 examination and invoice for \$1,311.13 to Respondent Back Bay,
3 Inc., via U.S. Certified Mail Return Receipt requested, for which
4 someone with the initials "TM" signed.

5 14. The above named Respondents failed to respond to the September 1,
6 2006 correspondence from the Department.

7 15. The Department, via U.S. mail, mailed a second notice on October
8 10, 2006 and a third notice on November 20, 2006.

9 16. The above named Respondents did not respond to any of the three
10 notices for payment of the \$1,311.13 invoice.

11 17. To date, the above named Respondents still owe the \$1,311.13
12 examination fee for the 2.6 day examination.

13 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
14 Safeguarding Customer Information, 16 C.F.R. Section 314.3 via RSA 397-

15 A:2,III (1 Count):

16 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
17 Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) via RSA 397-

18 A:2,III (1 Count):

19 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
20 Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) via RSA 397-

21 A:2,III (1 Count):

22 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
23 Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) via RSA 397-

24 A:2,III (1 Count):
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Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) via RSA 397-

A:2,III (1 Count):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (6
Counts):

18. Paragraphs 1 through 17 are hereby realleged as fully set forth
herein.

19. The above named Respondents have failed to maintain a
comprehensive information security program.

20. The above named Respondents are required to develop, implement,
and maintain a comprehensive information security program
(hereinafter "Information Security Program") that is written in
one or more readily accessible parts and contains administrative,
technical, and physical safeguards.

21. This Information Security Program was required to be implemented
by May 23, 2003 and was to contain the following:

A. a designated employee to:

- (1). coordinate the program;
- (2). perform a risk assessment;
- (3). design, implement and regularly test safeguard
controls;
- (4). monitor service providers and enter into contracts

1 that require service providers to implement and
2 maintain appropriate safeguards; and

3 (5). evaluate and adjust the program as necessary.

4 22. The above named Respondents (in 2006) did not have a written
5 policy to fulfill the above mentioned requirements.

6 23. The above named Respondents also do not have safeguards in place
7 to secure consumers' non-public personal information.

8 24. Respondents maintained non-current files in a storage facility in
9 the basement of Respondents' principal office. The building
10 suffered extensive water damage from a flood, which destroyed the
11 files. Further, the basement can be accessed by anyone.

12 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

13 C.F.R. Section 3500.7, (b) and (e) and Appendix D via RSA 397-A:2, III (1
14 Count):

15 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

16 C.F.R. Section 3500.7, (b) and (e) and Appendix D via RSA 397-A:16, I (1
17 Count):

18 Violation of RSA 397-A:17, I(1) Violation of Federal Laws and Rules (2

19 Counts):

20 25. Paragraphs 1 through 24 are hereby realleged as fully set forth
21 herein.

22 26. The above named Respondents use a particular credit service
23 company for purposes of obtaining credit information but fail to
24 disclose such information on the Good Faith Estimate in 2006.

Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

C.F.R. Section 3500.7, (a) via RSA 397-A:2,III (1 Count):

Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

C.F.R. Section 3500.7, (a) via RSA 397-A:16,I (1 Count):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (2
Counts):

27. Paragraphs 1 through 26 are hereby realleged as fully set forth
herein.

28. In 2005, the above named Respondents failed to provide a consumer
(Consumer A) with a Good Faith Estimate within three days of the
loan application.

Violation of RSA 397-A:13,I Failure to File Accurate Annual Report (1
Count):

29. Paragraphs 1 through 28 are hereby realleged as fully set forth
herein.

30. The above named Respondents' 2005 annual report failed to disclose
four loan originators.

31. To date, the above named Respondents have failed to amend the 2005
annual report accordingly.

Violation of RSA 397-A:12,VII Failure to Facilitate Exam (1 Count):

Violation of RSA 397-A:12,III Examinations: Failure to Provide Requested
Files (3 Counts):

Violation of RSA 397-A:11,II Record Keeping: Failure to Provide Requested
Files (3 Counts):

32. Paragraphs 1 through 31 are hereby realleged as fully set forth

1 herein.

2 33. The Department conducted an examination of Respondent Back Bay,
3 Inc. on November 26, 2007.

4 34. On October 29, 2007, the Department sent the notice of examination
5 to Respondent Back Bay, Inc. via U.S. Certified Mail Return
6 Receipt requested, which Respondents received on October 31,
7 2007.

8 35. The examination materials were due 21 days after Respondents'
9 receipt of the notice of examination, which would have been
10 November 21, 2007.

11 36. Respondent Mulligan contacted the Department on November 21, 2007
12 to indicate he had just received the notice (due to mail carrier
13 error) and would be sending out the materials on November 26,
14 2007.

15 37. On December 5, 2007, the Department received an email from
16 Respondent Back Bay, Inc.'s employee indicating she would be
17 sending some materials and Respondent Mulligan would be sending
18 the rest.

19 38. The Department still has not received Respondent Back Bay, Inc.'s
20 recent federal tax return, most recent quarterly financial
21 statement, or the work papers to support the annual report
22 filing.

23 39. To date, fines have accrued for failing to provide the requested
24 files. The current fine to date is \$20,400.00 (\$50.00 a day x
25 408 days) and is still accruing.

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The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in Paragraphs 1 through 39 as fully set forth herein.
2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
3. RSA 397-A:2, III requires persons subject to or licensed under RSA Chapter 397-A to abide by applicable federal laws and regulations, the laws and rules of the State of New Hampshire, and the orders of the Commissioner. Any violation of such law, regulation, order, or rule is a violation of RSA Chapter 397-A. Each of the above named Respondents violated this statute on at least eight occasions as alleged above.
4. 16 C.F.R. Section 314.3 Standards for Safeguarding Customer Information, states that the licensee must develop, implement and maintain a comprehensive information security program that is written in or more readily accessible parts and contains administrative, technical and physical safeguards. Each of the above named Respondents violated this federal law on at least one occasion as alleged above.
5. 16 C.F.R. Section 314.4(a), Standards for Safeguarding Customer Information, states that the licensee's information security program is required to designate an employee or employees to coordinate the program. Each of the above named Respondents

1 violated this provision on at least one occasion as alleged
2 above.

3 6. 16 C.F.R. Section 314.4(b), Standards for Safeguarding Customer
4 Information, states that the licensee is required to perform and
5 document a risk assessment. Each of the above named Respondents
6 violated this provision on at least one occasion as alleged
7 above.

8 7. 16 C.F.R. Section 314.4(c), Standards for Safeguarding Customer
9 Information, states that the licensee is required to design,
10 implement and regularly test safeguards in place. The Respondents
11 have violated this provision on one occasion as alleged above.

12 8. 16 C.F.R. Section 314.4(d), Standards for Safeguarding Customer
13 Information, states that the licensee is required to enter into
14 contracts with third party providers to ensure those parties
15 implement and maintain safeguards. Each of the above named
16 Respondents violated this provision on at least one occasion as
17 alleged above.

18 9. 16 C.F.R. Section 314.4(e), Standards for Safeguarding Customer
19 Information, states that the licensee is required to evaluate and
20 adjust the information security program. Each of the above named
21 Respondents violated this provision on at least one occasion as
22 alleged above.

23 10. 24 C.F.R. Sections 3500.7, (a), Regulation X, Real Estate
24 Settlement Procedures Act, provides that a licensee must provide
25 a provider with a Good Faith Estimate within three days of

1 application. Each of the above named Respondents violated this
2 provision on at least one occasion as alleged above.

3 11. 24 C.F.R. Sections 3500.7, (b) and (e), and Appendix D, Regulation
4 X, Real Estate Settlement Procedures Act, provide that the Good
5 Faith Estimate should include the particular service providers
6 required by the mortgage lender, including (1) that the provider
7 is required, (2) the contact information for the vendor, and (3)
8 the nature of any relationship that may exist. Each of the above
9 named Respondents violated this provision on at least one
10 occasion as alleged above.

11 12. RSA 397-A:11,II provides that requested files and business
12 records must be received by the Department within 21 calendar
13 days of request. The licensee will be subject to a \$50.00 a day
14 fine every day after the 21-day period the records are not
15 produced. Each of the above named Respondents (excluding
16 Respondent Miller) violated this provision on at least three
17 occasions as alleged above. Respondents currently owe \$20,400.00
18 to date and the fine is still accruing.

19 13. RSA 397-A:12,III requires licensees to comply with examination
20 requests with or without prior notice. All books, papers, files,
21 related material, and records of assets shall be subject to the
22 Department's examination. Each of the above named Respondents
23 (excluding Respondent Miller) violated this statute on at least
24 three occasions as alleged above.

1 14. RSA 397-A:12,V provides that the expense of such examination
2 shall be chargeable to and paid by the licensee. Each of the
3 above named Respondents violated this provision on at least one
4 occasion as alleged above. To date, the above named Respondents
5 have failed to pay the \$1,311.13 examination invoice.

6 15. RSA 397-A:12,VII provides that every person being examined, and
7 all of the officers, directors, employees, agents, and
8 representatives of such person shall make freely available to the
9 Commissioner or his or her examiners, the accounts, records,
10 documents, files, information, assets, and matters in their
11 possession or control relating to the subject of the examination
12 and shall facilitate the examination. Each of the above named
13 Respondents (excluding Respondent Miller) violated this statute
14 on at least one occasion as alleged above.

15 16. RSA 397-A:13,I provides that a licensee shall file its annual
16 report on or before February 1 each year concerning operations
17 for the preceding year or license period ending December 31.
18 Each of the above named Respondents violated this provision on at
19 least one occasion as alleged above.

20 17. RSA 397-A:13,IV provides that any mortgage banker or mortgage
21 broker failing to file either the annual report or the financial
22 statement required by RSA Chapter 397-A within the time
23 prescribed may be required to pay to the Department a penalty of
24 \$25.00 for each calendar day the annual report or financial
25 statement is overdue, up to a maximum penalty of \$2,500.00 per

1 report or statement. Each of the above named Respondents violated
2 this provision on at least one occasion as alleged above. The
3 above named Respondents filed a financial statement, that was 31
4 days late, and incurred a penalty of \$775.00.

5 18. RSA 397-A:13,VI provides that any officer, owner, manager or
6 agent of any licensee shall reply promptly in writing, or other
7 designated form, to any written inquiry from the Department.
8 Respondent Miller and Respondent Mulligan each violated this
9 provision on at least one occasion as alleged above.

10 19. RSA 397-A:16,I provides that licensees may charge fees and points
11 for services rendered in conjunction with the origination,
12 closing, and servicing of loans; provided, however, that the
13 licensee issues a written disclosure to the borrower stating the
14 estimated amount and purpose of all fees and expenses within
15 three business days of the receipt of a loan application. Each of
16 the above named Respondents violated this provision on at least
17 two occasions as alleged above.

18 20. RSA 397-A:17,I(1) provides that licensees must abide by all
19 federal laws or rules thereunder. The Gramm-Leach-Bliley Act,
20 Title V, Sec. 501(a) states that it is the policy of the Congress
21 that each financial institution has an affirmative and continuing
22 obligation to respect the privacy of its customers and to protect
23 the security and confidentiality of those customers' nonpublic
24 personal information. The Gramm-Leach-Bliley Act, Title V,
25 requires financial institutions to maintain the integrity of

1 nonpublic personal information. Each of the above named
2 Respondents violated this federal law on at least ten occasions
3 as alleged above.

4 21. RSA 397-A:18,I provides that the Department may issue a complaint
5 setting forth charges whenever the Department is of the opinion
6 that the licensee or person over whom the Department has
7 jurisdiction, has violated any provision of RSA Chapter 397-A or
8 orders thereunder.

9 22. RSA 397-A:21,IV provides that any person who, either knowingly or
10 negligently, violates any provision of RSA Chapter 397-A, may
11 upon hearing, and in addition to any other penalty provided for
12 by law, be subject to an administrative fine not to exceed
13 \$2,500.00, or both. Each of the acts specified shall constitute
14 a separate violation, and such administrative action or fine may
15 be imposed in addition to any criminal penalties or civil
16 liabilities imposed by New Hampshire Banking laws.

17 23. RSA 397-A:21,V provides that every person who directly or
18 indirectly controls a person liable under this section, every
19 partner, principal executive officer or director of such person,
20 every person occupying a similar status or performing a similar
21 function, every employee of such person who materially aids in the
22 act constituting the violation, and every licensee or person acting
23 as a common law agent who materially aids in the acts constituting
24 the violation, either knowingly or negligently, may, upon notice
25 and opportunity for hearing, and in addition to any other penalty

1 provided for by law, be subject to suspension, revocation, or
2 denial of any registration or license, including the forfeiture of
3 any application fee, or the imposition of an administrative fine
4 not to exceed \$2,500, or both. Each of the acts specified shall
5 constitute a separate violation, and such administrative action or
6 fine may be imposed in addition to any criminal or civil penalties
7 imposed.

8 **III. RELIEF REQUESTED**

9 The staff of the Department requests the Commissioner take the following
10 action:

- 11 1. Find as fact the allegations contained in section I of this Staff
12 Petition;
- 13 2. Make conclusions of law relative to the allegations contained in
14 section II of this Staff Petition;
- 15 3. Pursuant to RSA 397-A:17, order each of the above named
16 Respondents to show cause why their license should not be revoked;
- 17 4. Assess fines and administrative penalties in accordance with RSA
18 397-A:21, for violations of Chapter 397-A, in the number and amount
19 equal to the violations set forth in section II of this Staff
20 Petition; and
- 21 5. Take such other administrative and legal actions as necessary for
22 enforcement of the New Hampshire Banking Laws, the protection of
23 New Hampshire citizens, and to provide other equitable relief.

1 IV. RIGHT TO AMEND

2 The Department reserves the right to amend this Staff Petition and to
3 request that the Commissioner take additional administrative action.
4 Nothing herein shall preclude the Department from bringing additional
5 enforcement action under RSA 397-A or the regulations thereunder.

6 Respectfully submitted by:

7
8 /s/
Maryam Torben Desfosses
9 Hearings Examiner

01/02/09
Date